

1
2 STATE OF NEW YORK : NASSAU COUNTY
3 COUNTY COURT PART 11

5 THE PEOPLE OF THE STATE OF NEW YORK, SCI/IND. NO.
6 -against- 167N-2005
7 MARK ORLANDO, TRIAL
Defendant.

10 262 Old Country Road
Mineola, New York
June 10, 2005

13 Before:

14 HON. DAVID P. SULLIVAN, Supreme Court Justice

15 | Appearances:

17 HON. DENIS DILLON
18 District Attorney, Nassau County
By: ROBERT T. HAYDEN, ESQ.
19 Assistant District Attorney

DENNIS LEMKE, ESQ.
21 Attorney for Defendant
22 114 Old Country Road
 Mineola, New York 11501

24 Mary Ocskai
Official Court Reporter

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Proceedings

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2 THE CLERK: Continued case on trial,
3 167N-2004.

4 MR. LEMKE: For Mr. Orlando, Dennis Lemke, 114
5 Old Country Road, Mineola, New York.

6 THE COURT: Outside the present of the jury.
7 Was there an application, Mr. Lemke?

8 MR. LEMKE: Yes, just to renew my application
9 regarding premarked, just four other ones, I have no
10 objection to, but photographs 15, 13, 11 and 12, clearly
11 not only are they graphic, however, I believe the
12 probative value as I see that can certainly be shown
13 with photographs that are in black and white, is
14 clearly, are highly just inflammatory. They look
15 surreal in part because of the manner in which the head
16 is shaved.

17 I would not object to them all in black and white.
18 I am renewing my application again when they're shown,
19 they'll be a situation.

20 THE COURT: Specifically what exhibits
21 premarked for identification.

22 MR. LEMKE: 12, 13, 11, 12, 13 and 15.

23 THE COURT: Okay. The court has reviewed
24 those photographs and adheres to its earlier decision.
25 Application denied.

Proceedings

1 Mr. Lemke and Mr. Hayden, as was discussed at the
2 bench, the Court intends to go forward with three
3 witnesses and then I am going to break for about ten
4 minutes before the medical examiner takes the stand.
5 And then I will resume. Then I will break, no matter
6 what time that is, at the completion of the medical
7 examiner's testimony to two o'clock to enable you to
8 review Mr. Hayden Detective Kovar's potential testimony.

9 MR. LEMKE: Yes, Your Honor.

10 THE COURT OFFICER: Ready, Your Honor?

11 THE COURT: Yes.

12 THE COURT OFFICER: Jury entering.

13 THE CLERK: Continued case on trial,
14 167N-2005. People of the State of New York versus Mark
15 Orlando.

16 People ready?

17 MR. HAYDEN: Ready, Your Honor.

18 THE CLERK: Defendant ready?

19 MR. LEMKE: Ready.

20 THE CLERK: Let the record reflect the
21 presence of the defendant Mark Orlando, the sworn jurors
22 and the alternates.

23 THE COURT: Good morning, ladies and
24 gentlemen. Again I apologize for the delay. I have to
25 get the T.V. and everything here, get everything

Proceedings

1 together so that once we start we can move
2 continuously. However, overall in the scheme of things
3 we're moving very rapidly. So, I thank you for your
4 patience.

5 Mr. Hayden, call your next witness.

6 MR. HAYDEN: Michael Kuhn.

7 MICHAEL KUHN, detective, called as a witness on behalf of the
8 People, after having been first duly sworn, and having
9 stated his shield number as 559, and his command as
10 Homicide Squad, Nassau County Police Department, took
11 the witness stand and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HAYDEN:

14 THE CLERK: State your name, spelling your
15 last name, shield number and command.

16 THE WITNESS: Detective Michael Kuhn, K-U-H-N,
17 559, Nassau County Homicide Squad.

18 THE COURT: Good morning.

19 THE WITNESS: Good morning, Judge.

20 THE COURT: Mr. Hayden.

21 MR. HAYDEN: Yes, Your Honor.

22 Q Good morning, detective.

23 A Good morning.

24 Q How long have you been a member of the Nassau
25 County Police Department?

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Kuhn - People - Direct

1 A Approximately thirty-five years.

2 Q How long have you been a detective?

3 A Approximately sixteen years.

4 Q How long with homicide?

5 A Ten years.

6 Q I am directing your attention to the night of
7 Friday, December 10 2004.

8 Were you involved then with investigating the shooting
9 death of a young man named Bobby Calabrese?

10 A Yes, I was.

11 Q Did you respond to a house that night at 1119
12 Joselson Avenue in Bay Shore, New York?

13 A Yes, I did.

14 Q Who was with you then?

15 A Detective Sergeant Larson, Detective Bruser,
16 Detective DiPietro from my office, two crime scene detectives
17 and two Suffolk County uniform police officers.

18 Q Who lived at 1119 Joselso Avenue?

19 A Mark Orlando.

20 Q Describe the circumstances under which you and the
21 other detectives arrived at the house where Mark Orlando was
22 living?

23 A We were there to execute a search warrant signed by
24 Judge Cotter.

25 Q Is that Daniel Cotter?

Kuhn - People - Direct

1 A Yes, it was.

2 Q Did you take part in a search of Mark Orlando's
3 room?

4 A Yes, I did.

5 Q Was that in accordance with the warrant?

6 A Yes, it was.

7 Q Did you recover cash from Mark Orlando's bedroom?

8 A Yes, we did.

9 Q How much cash?

10 A \$2,749.

11 Q Describe the bills you recovered?

12 A Most of the bills were singles. However, there
13 were one thousand, one hundred dollar bills, the new type
14 with the large Ben Franklin on them.

15 Q When you say one thousand, you mean it was one
16 thousand dollars in \$100 bills?

17 A Yes.

18 Q Describe those \$100 bills?

19 A As I stated they were the newer type bills, they
20 were the large Ben Franklin picture on the bill, in very good
21 condition.

22 Q Describe where you recovered those bills?

23 A They were in a shoe box located in a safe which was
24 in the master bedroom in a walk-in closet.

25 Q Was a gun recovered in Mark Orlando's bedroom?

Kuhn - People - Direct

1 A Yes, there was.

2 Q Describe it?

3 A It was a twelve gauge Mossberg, M-O-S-S-B-E-R-G.

4 Q Was ammunition of any kind found in the house where
5 Mark was living?

6 A Shotgun ammunition, there were seven boxes of
7 shotgun shells, twenty-five shells in each box.

8 MR. HAYDEN: May I please have these two bills
9 which have been marked 42A through 42J shown to the
10 witness.

11 THE COURT: Yes.

12 Q Do you recognize those bills?

13 A Yes, sir. These are the same bills that were
14 recovered from the box, the shoe box, in the safe.

15 MR. HAYDEN: Offer those bills in evidence,
16 Your Honor.

17 MR. LEMKE: No objection, Your Honor.

18 THE COURT: Mark them into evidence.

19 THE COURT OFFICER: So marked, Judge.

20 THE COURT: Thank you.

21 THE COURT: So marked, Mr. Hayden.

22 Q Were any ATM receipts recovered inside Mark
23 Orlando's home?

24 A No, sir.

25 MR. HAYDEN: Nothing further at this time,

Kuhn - People - Cross

1 Your Honor.

2 THE COURT: Anything, Mr. Lemke?

3 MR. LEMKE: Yes.

4 CROSS EXAMINATION

5 BY MR. LEMKE:

6 Q Detective, when you had executed that search
7 warrant at Mr. Orlando's house, you were looking obviously
8 for any evidence in connection with death of Mr. Calabrese;
9 isn't that correct?

10 A That's correct, sir.

11 Q And, you had also looked for, in fact, you
12 recovered a shotgun, correct?

13 A That's correct.

14 Q And I think you indicated that there were shells to
15 that shotgun?

16 A That's correct.

17 Q There was, I believe, maybe seven boxes of shotgun
18 shells?

19 A That's correct.

20 Q Those shotgun shells themselves certainly don't fit
21 into any magnum gun, correct?

22 A Magnum handgun?

23 Q That's correct?

24 A No, sir.

25 Q You looked for other ammunition, there was no other

Kuhn - People - Cross

1 ammunition other than the shotgun shells; isn't that
2 correct?

3 A That's correct.

4 Q And the shotgun itself was found in my client's, I
5 believe, bedroom; isn't that correct?

6 A That's correct.

7 Q There was also close to, in fact, there was exactly
8 \$2,749, correct?

9 A That's correct.

10 Q And, in evidence, I think are the \$100 bills?

11 A That's correct.

12 Q And the other -- may I have those, please?

13 A Sure.

14 Q And, the other \$17,000 is still in evidence?

15 A Yes, sir.

16 Q Locked up?

17 A Yes.

18 Q You didn't bring that over here, did you?

19 A I didn't, no, sir.

20 Q You had indicated that they have Ben Franklin on
21 them?

22 A That's correct.

23 Q You indicated that certainly there's serial numbers
24 on these one hundred dollar bills, correct?

25 A That's correct.

Kuhn - People - Cross

1 Q They're not numerical in any way?

2 A No.

3 Q Nothing unique about these \$100 bills in any way,
4 correct?

5 A Other than they're the newer type, no, sir.

6 Q The newer type as of when?

7 A I guess it's about two years now.

8 Q Okay. So, these one hundred dollar bills now in
9 evidence, other than being produced within the last two
10 years, are not in any way any more unique than any other
11 hundred dollar bill I may have in my pocket or anybody else
12 has in their pocket?

13 A That's correct.

14 MR. LEMKE: Thank you.

15 THE COURT: Anything further, Mr. Hayden?

16 MR. HAYDEN: No, Your Honor.

17 THE COURT: Thank you, detective. Have a good
18 day.

19 (Witness excused.)

20 MR. HAYDEN: Michael Nigro.

21 MICHAEL NIGRO, detective, called as a witness on behalf of
22 the People, after having been first duly sworn, and
23 having stated his shield number as 903, and his command
24 as the Homicide Squad, Nassau County Police Department,
25 took the witness stand and testified as follows:

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Nigro - People - Direct

1 DIRECT EXAMINATION

2 BY MR. HAYDEN:

3 THE CLERK: State your name, spell your last
4 name, shield number and command.

5 THE WITNESS: Detective Michael Nigro,
6 N-I-G-R-O, shield 903, ASSIGNED to the Homicide Squad,
7 Nassau County Police Department.

8 THE COURT: Good morning.

9 THE WITNESS: Good morning.

10 THE COURT: Mr. Hayden.

11 Q Good morning?

12 A Good morning.

13 Q How long have you been a member of the Nassau
14 County Police Department?

15 A Approximately eighteen years.

16 Q How long a detective?

17 A Approximately seven years.

18 Q How long with homicide?

19 A I was temporarily assigned July of 2004 which
20 became permanent February of this year.

21 Q I am directing your attention to the night of
22 Friday, December 10, 2004.

23 Were you involved then with investigating the shooting
24 death of a young man named Bobby Calabrese?

25 A Yes, sir.

Nigro - People - Direct

1 Q Did you respond to a house that night at 159 Sammis
2 Avenue in Deer Park, New York?

3 A I did.

4 Q Who was with you then?

5 A There was Detective Sergeant Herbert Bob, Detective
6 John Lapine, and I met Detective Michael O'Leary there.

7 Q Who lived at 159 Sammis Avenue?

8 A That was the residence of Herva Jeannot.

9 Q Who was home when you got there?

10 A When I arrived, his mother was there, his brother,
11 and his sister, and I believe there was some other family
12 members present.

13 Q Describe the circumstances under which you and the
14 other detectives arrived at the house where Herva Jeannot was
15 living?

16 A We were going there to do an execution of a search
17 warrant which was signed by Judge Cotter.

18 Q Daniel Cotter?

19 A Yes.

20 Q Did you take part in a search of Herva Jeannot's
21 room?

22 A Yes, I did.

23 Q Was that in accordance with the warrant?

24 A Yes, sir.

25 Q Did you recover cash inside Herva Jeannot's

Nigro - People - Direct

1 bedroom?

2 A I did.

3 Q What did you recover?

4 A Five one hundred dollar bills.

5 Q Describe those bills?

6 A They were in fairly good condition with the larger
7 faced Ben Franklin on the front.

8 Q Describe where you found the five one hundred
9 dollar bills?

10 A They were located in a shoe box inside Herva
11 Jeannot's closet in his bedroom. They were located in a shoe
12 box which was on top of a dresser inside the closet.

13 Q Was that the only money recovered?

14 A Yes, sir.

15 Q Was a gun recovered in Herva Jeannot's bedroom?

16 A There was a gun recovered.

17 Q Describe that gun for the jury?

18 A It was a Daisy BB gun which was located on a shelf
19 inside that same closet.

20 Q Was any other gun found in the house where Herva
21 Jeannot was living?

22 A No, sir.

23 Q Was ammunition of any kind found in the house where
24 Herva Jeannot was living?

25 A No.

Nigro - People - Direct

1 Q Was a gun manual or other gun paraphernalia found
2 in the where Herva Jeannot was living?

3 A No, sir.

4 MR. HAYDEN: May I please have 41 for
5 identification shown to the witness, Your Honor.

6 Q Do you recognize those bills?

7 A I do.

8 Q What are they?

9 A These are the five one hundred dollar bills that I
10 recovered from Herva Jeannot's bedroom.

11 MR. HAYDEN: People offer those in evidence.

12 MR. LEMKE: No objection, Your Honor.

13 THE COURT: Mark them into evidence, please.

14 THE COURT OFFICER: So marked.

15 MR. HAYDEN: Nothing further, Your Honor.

16 THE COURT: Mr. Lemke.

17 MR. LEMKE: No questions. Thank you,
18 detective.

19 THE COURT: Thank you, detective. Have a good
20 day.

21 THE WITNESS: You do the same. Thank you.

22 (Witness excused.)

23 MR. HAYDEN: James DiBenedetto.

24 JAMES DIBENEDITTO, detective, called as a witness on behalf
25 of the People, after having been first duly sworn, and

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Nigro - People - Direct.

1 having stated his shield number as 749, and his command
2 as the Firearms Identification Section, Nassau County
3 Police Department, took the witness stand and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. HAYDEN:

7 THE CLERK: State your name, spell your last
8 name, give your shield number and command.

9 THE WITNESS: Detective James DiBeneditto,
10 D-I-B-E-N-E-D-I-T-T-O, shield number 749. I work for
11 the Firearms Identification Section of the Nassau County
12 Police Department.

13 THE COURT: Good morning.

14 THE WITNESS: Good morning.

15 MR. HAYDEN: Yes, Your Honor.

16 Q Goods morning.

17 A Goods morning.

18 Q How long have you been a member of the Nassau
19 County Police Department?

20 A Ten years.

21 Q How long a detective?

22 A Since December 2001.

23 Q How long have you been with firearms?

24 A Since June of 2000, five years.

25 Q Describe the training you received in the firearms

DiBeneditto - People - Direct

1 field?

2 A I received training by the Nassau County Police
3 Department's Firearms Identification Section. It was a two
4 year training program that involved cartridge case and
5 bullets identification, serial number registrations, firearms
6 operability and functionability, distance gunshot residue in
7 regards to distance determinations.

8 I am also a graduate of the National Firearms Examiner's
9 Academy hosted by the Bureau of Alcohol, Tobacco and
10 Firearms. That is in addition to the training I have already
11 completed with the Nassau County Police Department. This
12 training is a twelve month program. That is, like I said,
13 hosted by the National Firearms Academy, ATF. That went into
14 a little more in detail in cartridge and bullet
15 identifications, serial number restorations, distance
16 determinations, and other firearms identification area. Also
17 afforded me the opportunity to visit fifteen, approximately
18 fifteen manufacturing facilities. That is important so I
19 could understand and know how a firearms is made, what tools
20 are use, what kind of markings that can be left on either a
21 bullet or a cartridge case.

22 I was also afforded the opportunity by the Bureau of
23 Alcohol, Tobacco and Firearms to attend an ammunition tour by
24 Remmington which is a nationally known cartridge and
25 ammunition manufacturer in Arkansas. That is where it was.

DiBeneditto - People - Direct

1 And I was able to watch how they manufacture bullets, how
2 they make everything, including the gunpowder. I also am a
3 certified armor in Glock, Smith and Wesson, and in High
4 Point.

5 Q Describe any experience you have had in the
6 firearms field?

7 A Okay. I have analyzed hundreds of bullets and
8 dispatch cartridge cases. I also did hundreds of cases in
9 regards to firearms operability examinations. I conducted
10 analysis in distance determinations. I am also, I also
11 visually examined thousands of firearms in the Smithsonian
12 Institute and Spring Armory Tower. It's in Massachusetts.

13 Q Have you examined firearms in the course of your
14 work?

15 A Yes, I have.

16 Q Approximately how many?

17 A Hundreds.

18 Q Have you examined bullets, spent shell casings and
19 cartridges?

20 A Yes, I have.

21 Q Approximately how many?

22 A That is also in the hundreds.

23 Q Have you testified as an expert in the firearms
24 field?

25 A Yes.

DiBenedetto - People - Direct

1 Q How often?

2 A Approximately ten times.

3 Q Where?

4 A In Nassau County Criminal Court.

5 Q What do you mean by a cartridge or live round?

6 A A cartridge is a unit of ammunition that is
7 comprised of four components.

8 Q Tell us what those components are?

9 A Those four components are made up of a bullet, a
10 cartridge case, a primer and gunpowder.

11 Q What do you mean by a cartridge case?

12 A A cartridge case is what houses the primer, the
13 gunpowder sits inside there and the bullet also gets fitted
14 inside the cartridge case and it all becomes one unit of
15 ammunition.

16 Q What do you mean by primer?

17 A Primer is what the firing pin strikes. What that
18 does, the primer it explodes and causes a flame to shoot into
19 the cartridge case which then ignites the gunpowder.

20 Q What do you mean by a bullet?

21 A A bullet is the projectile that exits the barrel of
22 the firearm. It's what comes out of the gun through the
23 nozzle of the firearm. The end of it.

24 Q Describe the components of a copper jacketed
25 bullet?

DiBenedetto - People - Direct

1 A Okay. A copper jacketed bullet has a copper
2 alloyed that usually surrounds a lead core. A bill cord we
3 call it.

4 MR. HAYDEN: Your Honor, may I please have
5 this marked for identification.

6 THE COURT: Hasn't been marked?

7 MR. HAYDEN: No.

8 THE COURT: People's 68 marked for
9 identification.

Do you want this shown to the witness?

11 MR. HAYDEN: Yes.

12 Q Take a look at that?

13 A Yes.

14 Q Is that a display you prepared to help explain the
15 parts of a cartridge and the components of a bullet to the
16 jury?

17 A Yes, it is.

18 Q Would that help you explain the parts of a
19 cartridge and parts of a bullet to the jury?

20 A Sure.

21 MR. HAYDEN: I would ask that be introduced
22 into evidence.

23 MR. LEMKE: No objection, Your Honor.

24 THE COURT: Mark it into evidence as an aid to
25 the jury.

DiBenedutto - People - Direct

1 THE COURT OFFICER: People's 68 marked in
2 evidence.

3 MR. HAYDEN: With the Court's permission, I
4 would ask that Detective DiBenedetto step down before
5 the jury and use that exhibit to explain the parts of a
6 cartridge and the parts of a bullet.

7 MR. LEMKE: No objection.

8 THE COURT: Yes.

9 A When I said this was a unit of ammunition, this is
10 one full unit of ammunition. Okay. This is the cartridge
11 case, the silver part is the cartridge case, the copper piece
12 is, that is what we call the bullet. That is the piece of
13 copper alloyed and lead core, that is the projectile that
14 comes out of the, out of the barrel. There is the cartridge
15 case. This is the bullet. And this is gunpowder, what we
16 call propellant. Okay.

17 On the head stamp or the flat end of this cartridge case
18 is primer that sits inside the cartridge case. When the fire
19 pin strikes it, it hits this primer and an explosion occurs
20 causing a flame to shoot through into the cartridge case,
21 right into the cartridge case, igniting this, the gunpowder,
22 causing gases to build up, and as soon as the gases build up
23 enough pressure, it will then exert or expel this bullet out
24 of the cartridge case down the barrel and to the target.

Q Show the jurors the copper jacketed bullet. Show

DiBenedetto - People - Direct

1 them what you mean by the copper jacket. Show them where
2 that bullet core is?

3 A This is the copper jacket. Okay. It's the outside
4 part of the bullet. Inside on this particular bullet you can
5 see the lead, the lead bullet core. Okay. That is the
6 grated part, that is, the lead is inside it. This piece,
7 this copper alloyed surrounds that piece of lead. It's the
8 harder of the two, harder of the two objects, that material.

9 Q What type of cartridge is that?

10 A This is a .44 magnum. It's a very large bullet.

11 Q Please retake the witness stand.

12 What do you mean by a revolver?

13 A A revolver is usually a handgun. It's a firearm
14 that has a cylinder. Okay. Inside that cylinder houses
15 chambers, and inside those chambers fits this one unit of
16 ammunition. It usually has five or six chambers inside of
17 it. When the shooter pulls the trigger, the cylinder will
18 revolve around allowing the chamber to line up with the
19 barrel so the bullet can then travel down the barrel and come
20 out of the gun.

21 Q What happens to the shell casing of a cartridge
22 barrel fired in a revolver?

23 A It will stay with the firearm. It does not exist
24 out of the cartridge.

25 Q What happens to the bullet?

DiBeneditto - People - Direct

1 A The bullet will expel out of the barrel or the
2 nuzzle end of the barrel.

3 Q Are you familiar with the term bullet wipe?

4 A Yes.

5 Q What do you mean by bullet wipe?

6 A Bullet wipe is, will be a discoloration of a bullet
7 hole entry. It's usually light to dark gray. It surrounds
8 the bullet hole entry that is caused by lead filing that is
9 inside the barrel. Lubricant or other type of, sometimes
10 even the lead of the bullet will then surround that copper or
11 that lead and that will get placed onto that bullet hole
12 entry it's the shape of a ring usually.

13 Q Are you familiar with the term particulate?

14 A Yes.

15 Q What do you mean by particulate?

16 A Particulate is primarily unburned, partially burned
17 or burnt gunpowder.

18 Q I am directing your attention to around 1:45, on
19 the early morning of Saturday, December 4th, of 2004.

20 Were you involved then with investigating the shooting
21 death of a young man named Bobby Calabrese?

22 A Yes, I was.

23 Q Were you in the vicinity of Broadway and North Long
24 Beach then?

25 A Yes, I was.

DiBeneditto - People - Direct

1 Q Did you obtain evidence then?

2 A Yes, I did.

3 Q Did the evidence comprise of a copper jacket of a
4 bullet?

5 A Yes, it did.

6 Q How was the copper jacket contained when you
7 received it?

8 A It was contained in a clear plastic box that was
9 placed in a brown paper bag.

10 Q Who did that?

11 A Detective Nystrom of the crime scene search
12 section.

13 Q Were you there when he did it?

14 A Yes.

15 Q What did you do with the copper jacket when
16 Detective Nystrum gave it to you?

17 A I placed it in my coat pocket.

18 Q I am directing your attention to around 1:45 that
19 Saturday afternoon.

20 Were you involved with the investigation then?

21 A Yes.

22 Q Were you at the medical examiner's office then?

23 A Yes, I was.

24 Q Were you down in the morgue?

25 A Yes, I was.

DiBeneditto - People - Direct

1 Q Did you obtain evidence then?

2 A Yes, I did.

3 Q Did the evidence comprise of two copper jackets,
4 three metal cores and some bullet fragments?

5 A Yes.

6 Q How did you obtain the two copper jackets, the
7 three metal cores and the bullet fragments?

8 A I received them in a closed plastic container by
9 Dr. DeMartino.

10 Q Were you there when he contained those items?

11 A Yes.

12 Q Did Dr. DeMartino mark the evidence before he gave
13 it to you?

14 A Yes, he did.

15 Q How, how did he do that?

16 A Based of the bullets or the bullet jacket fragments
17 he put MD2, MD3, and he also labeled the outside of the
18 plastic containers by bullet, bullet 1, 2, 3, and I believe
19 fragments.

20 Q What did you do with the containers and evidence
21 after Dr. DeMartino gave them to you?

22 A I brought them back to the firearms identification
23 section for analysis.

24 MR. HAYDEN: May I please have 53 for
25 identification shown to the witness.

DiBenedetto - People - Direct

1 THE COURT: Yes:

2 THE COURT OFFICER: The witness has 53 for
3 ID.

4 Q Do you recognize the contents of that clear plastic
5 bag?

6 A Yes.

7 Q What are they?

8 A These are the plastic containers that I received
9 from Dr. DeMartino. These are the paper bags that I
10 received. I received these four in one paper bag, and then
11 this is the plastic container that Detective Nystrom from the
12 crime scene search section gave me and that was also in a
13 paper bag.

14 Q That paper bag is in there too?

15 A Yes, there's two paper bags.

16 MR. HAYDEN: People offer the contents of that
17 clear plastic bag in evidence.

18 MR. LEMKE: No objection, Your Honor.

19 THE COURT: Mark it in evidence.

20 THE COURT OFFICER: People's 53 marked in
21 evidence.

22 Do you want it shown back to the witness?

23 MR. HAYDEN: No, thank you.

24 Okay. May I please have 26 for identification
25 shown to the witness?

DiBeneditto - People - Direct

1 THE COURT: Yes.

2 THE COURT OFFICER: The witness has 26 for
3 ID.

4 Q Do you recognize the contents of that clear plastic
5 bag?

6 A Yes, I do.

7 Q What do you recognize it to be?

8 A This is the bullet jacket fragments that was
9 recovered by, recovered at the crime scene. And these are
10 the lead fragments and the bullets fragments that was
11 recovered by Dr. DeMartino during the autopsy. These are the
12 lead fragments also.

13 Q Was it you who contained that evidence in that
14 clear plastic bag?

15 A Yes, it is. I know that due to the fact my
16 initials are on each corner, and I labeled each item JD.

17 MR. HAYDEN: People offer that in evidence,
18 Your Honor.

19 MR. LEMKE: No objection, Your Honor.

20 THE COURT: Mark it in evidence.

21 THE COURT OFFICER: People's 26 marked in
22 evidence.

23 Do you want it shown back to the witness?

24 MR. HAYDEN: Yes. Thank you.

25 MR. HAYDEN: With the Court's permission, Your

DiBenedetto - People - Direct

1 Honor, may the detective step down and describe to the
2 jury the contents of that clear plastic bag?

3 MR. LEMKE: No objection.

4 THE COURT: Go ahead.

5 A This is the bullet jacket fragment, this was
6 recovered from the crime scene. This is the piece of copper
7 jacket that I explained to you that surrounds the lead core.
8 Okay. This was a piece of lead core that separated from a
9 bullet jacket fragment. This is the bullet jacket fragment.
10 That is the bullet core. This is lead. This is copper.
11 Copper alloyed. Okay.

12 Show you over here. Bullet fragment. That is a bullet
13 jacket. That is the lead bullet core.

14 Q How did it come apart like that?

15 A Upon impact it will sometimes separate. That is
16 basically what happens during impact depending on what it
17 strikes. It will leave its, it will leave its jacket and
18 separate.

19 Q Both separated parts would tear through the target?

20 A Yes, both will enter.

21 Q Fragments?

22 A Usually, yes.

23 Q Please retake the stand.

24 Did you microscopically examine the bullet jackets and
25 metal cores?

DiBenedutto - People - Direct

A Yes, I did.

Q Describe how you did that?

A By use of a comparison microscope which is basically two microscopes sharing an optical bridge that allows me to look at two images simultaneously under the same magnification.

Q Describe any observations you made?

A I observed on the bullet jackets striations which are scratches across the surface, and I was able to identify the bullet jackets to one another.

Q Tell the jury what you're talking about when you say striations. What is that?

A Okay. Striations are, when a barrel is manufactured, the manufacturer will cut grooves into a barrel. Now, those grooves, when a firearm is discharged, those grooves, the raised portion are called lands. So there the grooves cut into this piece of metal. The raised portion of those grooves are called lands.

Now, what happens, when the firearm is discharged, the firearm, the bullet will then take up that rifling or those grooves and those lands impressions and they'll take up that and it will be imparted onto that bullet.

And, that is what I am looking at. Those series of scratches. I am looking at that to identify a bullet.

Q Each gun will have these lands and grooves inside

DiBenedetto - People - Direct

1 the barrel?

2 A Yes, each gun.

3 Q And, in each gun the lands and grooves will be
4 different?

5 A Yes. Each firearm will have its own unique
6 signature.

7 Q And, as each bullet comes down through the barrel,
8 the unique set of lands and grooves will be imprinted on the
9 bullet?

10 A Yes.

11 Q Help identify it for future reference?

12 A Yes.

13 Q Based upon your training and experience, and upon
14 your microscopic examination of the three bullets, did you
15 form an opinion, with a reasonable degree of scientific
16 certainty, about whether they were fired from the same
17 handgun?

18 A Yes.

19 Q What is that opinion?

20 A That the bullet jacket fragments exhibit sufficient
21 quantity and quality of matching striation patterns for a
22 positive identification or a common source firearm.

23 Q I am directing your attention to around 5:44 that
24 Saturday afternoon.

25 Were you involved with the investigation then?

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1 A Yes.

2 Q Did you obtain Bobby Calabrese's clothing then?

3 A Yes, I did.

4 Q How did you obtain it?

5 A I obtained it in a brown paper bag.

6 Q Did the clothing include a hooded pullover sweat
7 shirt?

8 A Yes, it did.

9 Q Would you describe it?

10 A A gray sweat shirt that had a mermaid on it, that
11 also ha the word Unsound. It had, it had defects, which I
12 mean, holes, on the front of the sweat shirt. It had a, on
13 the front of the sweat shirt it had also had a tear right
14 down by where the hood and the sweat shirt actually meet.
15 And then also the pocket was also kind of torn. It was
16 pulled. And then on the back of the sweat shirt, there were
17 two bullet hole entries that the, and that had also two more
18 holes that looked like there was a path that the bullet
19 traveled before it struck the victim.

20 Q And the right sleeve?

21 A The right sleeve had one hole and another hole
22 which appeared to be the exit hole.

23 Q I am directing your attention to around 3:19 on the
24 afternoon of Wednesday, December 22, 2004.

25 Were you involved with the investigation then?

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1 A Yes, I was.

2 Q Did you obtain a handgun then?

3 A Yes, I did.

4 Q How did you obtain it?

5 A I received it in our firearms clothing room. It
6 was a white bucket that had, I believe, emergency shower
7 tester on it, and the gun was in water when I received it.

8 MR. HAYDEN: Your Honor, may we approach for a
9 moment.

10 THE COURT: Yes.

11 (Whereupon, there was a bench conference held off
12 the record.)

13 THE COURT: Ladies and gentlemen we're going
14 to take like a two minute break. Same admonitions
15 apply. Don't discuss this case among yourselves or with
16 anyone else.

17 Please take the jury out.

18 THE COURT OFFICER: Leave your note pads on
19 the chair.

20 THE COURT: You can step down.

21 (Whereupon, there was a recess in the proceedings.)

22 THE COURT OFFICER: Ready for the jury.

23 THE COURT: Yes.

24 THE COURT OFFICER: Jury entering.

25 THE CLERK: Let the record reflect the

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1 presence of counsel, defendant and the jury.

2 THE COURT: I said two minutes and I stuck to
3 that time.

4 Mr. Hayden.

5 MR. HAYDEN: Yes.

6 May I have 55 in evidence shown to the witness.

7 THE COURT: Witness has 55 in evidence.

8 Q Do you recognize that?

9 A Yes, I do.

10 Q What is that?

11 A This is the white bucket the firearm was sitting in
12 water and I know it is because of my initials and dates I
13 opened it.

14 Q Was it sealed when you obtained it?

15 A Yes, it was. It was sealed with red tape.

16 Q You broke the seal?

17 A Yes, I broke the seal.

18 Q Describe the gun you received?

19 A I received a Smith & Wesson Model 29. It's an
20 eight inch barrel. It's a heavy firearm. It's, basically,
21 it's a hunting firearm when the barrel is that long.

22 Q What is the serial number?

23 A I believe it's BCA9255.

24 Q How do you reach the serial number?

25 A On this particular firearm it has a rubber grip.

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1 That rubber grip needs to be removed. It's on the butt of
2 that firearm.

3 MR. HAYDEN: May I please have 40 for
4 identification shown to the witness.

5 THE COURT: Yes.

6 THE COURT OFFICER: The witness has 40 for ID.

7 Q Do you recognize that?

8 A Yes, I do.

9 Q Is that the handgun you obtained?

10 A Yes, it is.

11 Q Do you recognize other contents of that clear
12 plastic bag?

13 A Yes, I do. These are the tests that I took to make
14 my identification and to also let me know the firearm is
15 operable.

16 MR. HAYDEN: People would offer that in
17 evidence, Your Honor.

18 MR. LEMKE: No objection, Your Honor.

19 THE COURT: Mark it in evidence.

20 THE COURT OFFICER: People's 40 marked in
21 evidence.

22 Do you want it shown back to the witness.

23 MR. HAYDEN: Yes, please.

24 Q Tell the jury what you mean by the caliber of the
25 gun?

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1 A The caliber of a gun is measured from the barrel
2 from hand to hand and that will give me the caliber. It's
3 usually measured, it is measured in thousands of an inch.

4 Q What do you mean when you say 44 caliber?

5 A It's a designation, but this particular bullet and
6 barrel are measured at 4.1 one thousandths of an inch.

7 Q What is the significance of the term magnum. When
8 you say 44 magnum revolver?

9 A It's a, more gunpowder that is added to the
10 cartridge to add more power to the ammunition component.

11 Q What does that mean?

12 A It means there's more power, more veracity, the
13 bullets will travel at a faster speed.

14 Q Did you weigh the 44 magnum in evidence?

15 A Yes, I did.

16 Q How much does it weigh?

17 A 3.66 pounds.

18 Q Did you determine the trigger pull?

19 A Yes, I did.

20 Q What do you mean by trigger pull?

21 A This particular firearm fires in single action and
22 double action. Single action means pulling of the hammer
23 back, then pulling of the trigger. Also double action means
24 it runs continuous; pull of the trigger will allow this
25 firearm to discharge. Now, the trigger pull, when I measured

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1 the trigger pull, it takes, it is measured in how many pounds
2 it takes to pull back this trigger to discharge.

3 Q Tell the jurors how you determine that?

4 A What kind of a device do you use?

5 A We use static weights. It's weights that are
6 placed on a hock and that hock gets placed on the trigger,
7 and whatever weight pulls down that trigger and makes the
8 firearm discharge will tell me how much, how many pounds of
9 pressure it takes for me to pull that trigger and to
10 discharge that gun.

11 Q What was the trigger pull in single action?

12 A Three to three and-a-half pounds.

13 Q Once again, that would be, you cock back the hammer
14 so it sits in a cocked back position and then you pull the
15 trigger; is that right?

16 A That's correct.

17 Q What is the trigger pull in double action?

18 A Around eleven to eleven and-a-half pounds.

19 Q That means you take the gun and you pull the
20 trigger straight through?

21 A That's correct.

22 Q And that takes back the hammer and sends the hammer
23 forward; is that right?

24 A That's correct.

25 Q And the hammer hits the primer and ignites the gun

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1 powder, and that propels the projectile out of the nozzle at
2 the end of the barrel; is that right?

3 A Yes, that's correct.

4 Q You test fired the 44 Magnum revolver?

5 A Yes, I did.

6 Q How many times?

7 A Approximately four times, five times.

8 Q Describe for the jury how you did that?

9 A When we test a firearm we want to recover the
10 bullets and the cartridge cases so we use what we call a
11 ballistics water tank. All it is it's a long tank that has
12 water in it, and what that does is it helps or aids us in
13 recovering the bullet in the best condition possible. We try
14 to get it to being in a pristine position so we can identify
15 it on the comparison microscope so we can analyze it.

16 Q Was there a quick recoil when you fired the 44
17 Magnum revolver?

18 A Yes, this firearm has a very strong recoil, a very
19 strong kick.

20 Q Tell the jury what you're talking about?

21 A When you shoot a gun sometimes the gun will, you
22 can shoot, it will kick back a little bit. What I mean by
23 kickback, this particular firearm, when I shoot it, it will
24 come back at you. It's a very powerful firearm.

25 Q Describe how you held the 44 Magnum revolver while

DiBenedetto - People - Direct

1 you were test firing it?

2 A When I test fired this firearm I used two hands to
3 test fire a 44 Magnum.

4 Q Show the jurors what you mean. How did you hold
5 it?

6 A I would hold it like this. So, to help me to
7 rebound from that recoil so I can keep my gun on the target.

8 Q Did you recover bullets that were test fired from
9 the revolver?

10 A Yes, I did.

11 Q Are those the bullets that are contained in that
12 clear plastic bag?

13 A Yes, it is.

14 Q Did you microscopically compare the test fired
15 bullets with the three bullets recovered during the
16 investigation?

17 A Yes.

18 Q Describe for the jury how you made those
19 comparisons?

20 A By the use of the comparison microscope again. I
21 compared my tests to the evidence that was submitted, from
22 the medical examiners's office, and from the crime scene,
23 bullet jacket fragment.

24 Q Describe how you used the microscope to make a
25 comparison? How you line up the test bullets. How do you

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1 line up the bullets recovered from Bobby?

2 A You would take the bullet and you would, the
3 evidence stays on the left hand side so I never get
4 confused. So, you place the bullets on the left hand side,
5 the evidence, and your tests on the right. Now, I explained
6 before the comparison microscope. We have binoculars that
7 you're able to look with both eyes. You have one piece of
8 evidence here, one piece of evidence here, and one test
9 here. And you're able to move those back and forth so you
10 can look at the lands and the grooves and you're able to make
11 an identification that way.

12 Q Based upon your training and experience and upon
13 your comparison of the test fired bullets with the bullets
14 recovered during the investigation, did you form an opinion
15 with a reasonable degree of scientific certainty whether the
16 recovered bullets were fired from the same 44 Magnum revolver
17 as the test fired bullets?

18 A Yes.

19 Q What is that opinion?

20 A My opinion is that they showed no exhibited
21 sufficient amount of quantity and quality of matching
22 striation patterns from my test to my evidence to tell me
23 this particular firearm did fire those bullet jackets.

24 Q Did you examine Bobby Calabrese's sweat shirt?

25 A Yes, I did.

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1 Q Did you examine it with a naked eye?

2 A Yes, I did.

3 Q Describe any observations you made with the naked
4 eye?

5 A It was a very bloody T-shirt. I mean the sweat
6 shirt, excuse me, it was very bloody, a large amount of blood
7 on the arm. There was a bullet whole entry on one side,
8 bullet whole exist on the opposite side. There was a bullet
9 whole, there was a defect in the front of the sweat shirt.
10 There was also a tear in the top piece. Then on the back of
11 it, I saw two more bullet hole entries that had very distinct
12 bullet wipe and there was two other defects in that sweat
13 shirt.

14 Q You said there were two other defects?

15 A Yes.

16 Q What do you mean by that?

17 A There's other holes there that lined up with one of
18 the other, with the bullet hole entry.

19 Q They were tears?

20 A Yes, sir, they were tears.

21 Q Did you examine the sweat microscopically?

22 A By the use of a stereo microscope.

23 Q How did you do that?

24 A It's a lower, the stereo microscope is a lower
25 magnification microscope, and what I would do I would examine

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1 over the bullet hole entries and what I would look for is
2 that particulate, I would look at the bullet wipe, and I
3 would try to come up with some kind of a pattern that I could
4 look at so I could determine what kind of a distance I am
5 looking at.

6 Q Describe any observations you made while examining
7 the sweat shirt microscopically?

8 A I observed; I observed particulate grouping,
9 particulate around the bullet hole entries in the back of the
10 sweat shirt, both bullet hole entries. Also saw a strong
11 indication of bullet wipe or a discharge or indicators there
12 was a bullet that passed through this sweat shirt.

13 Q Once again what do you mean by particulate?

14 A Partial burn or unburned gunpowder.

15 Q Did you conduct tests to determine the muzzle to
16 gun distance between the 44 magnum, the muzzle of the barrel
17 of the 44 magnum and the sweat shirt?

18 A Yes.

19 Q What do you mean by the muzzle?

20 A The muzzle is the end of the barrel. It's where
21 the bullet exits.

22 Q What do you mean by muzzle to garment distance?

23 A That exit point end of that muzzle to the target
24 where clothing or the victim might be.

25 Q Describe the tests you conducted.

DiBenedetto - People - Direct

1 A I conducted a test by test firing what we call a
2 snail trap, small version of a trap, which the shooter would
3 shoot off a range, just a small little piece I would shoot in
4 so the bullet would disintegrate into that snail trap.

5 What I did was, I shot at contact, near contact, and by
6 near contact I mean a half inch to three inches, six inches,
7 nine inches, fifteen inches, eighteen inches, twenty-four
8 inches, thirty-six inches and forty-eight inches.

9 Q Based on your training and experience and upon your
10 microscopic examination of the sweat shirt, and upon the
11 tests you conducted with the 44 Magnum, did you form an
12 opinion, with a reasonable degree of scientific certainty,
13 about the nozzle to garment distance between the 44 Magnum
14 revolver and Bobby Calabrese's sweat shirt?

15 A Yes.

16 Q What is that opinion?

17 A My opinion, it's not less than six inches and not
18 more than forty-eight inches.

19 Q Describe the basis for that opinion?

20 A I visually compared my tests that I conducted to
21 my, to the evidence, sweat shirt.

22 MR. HAYDEN: With the Court's permission, may
23 Detective DiBenedutto step down before the presenter,
24 Your Honor.

25 MR. HAYDEN: I will now place People's 10 in

DiBeneditto - People - Direct

1 evidence on the presenter.

2 THE COURT: Yes.

3 Q Do you see bullet wipe in that photograph?

4 A Yes.

5 Q Show the jurors the bullet wipe depicted in that
6 photograph?

7 A Bullet wipe usually like I said might be gray to
8 dark gray. This is the peripheral area of the bullet hole
9 entry. There's a very strong indication of bullet wipe.

10 Q It appears in the photograph as a circle around the
11 bullet hole itself; is that right?

12 A That's correct.

13 Q Something you might have put there with a lead
14 pencil?

15 A That's correct.

16 Q But it's actually from the bullet itself?

17 A Right.

18 Q Please retake the witness stand.

19 Nothing further at this time. Thank you.

20 MR. LEMKE: May I?

21 THE COURT: Yes, Mr. Lemke.

22 CROSS EXAMINATION

23 BY MR. LEMKE:

24 Q Good morning, detective.

25 A Good morning, sir.

DiBenedetto - People - Cross

1 Q Detective, based on your training and now the
2 evaluation of the sweat shirt which is now in evidence, in
3 simplest form, there is a, basically a residue that was left
4 on the sweat shirt, correct?

5 A That's correct.

6 Q That residue is either, for an simpler way to put
7 it, gunpowder?

8 A Are you talking about the ring around the bullet
9 hole entry.

10 Q Yes.

11 A That could be lubricant, it could be lead filings
12 inside that barrel, it could be different things, but it
13 appears to be lead.

14 Q But it gives you a clear indication of whether or
15 not a firearm was discharged within a perimeter of the body;
16 is that correct?

17 A I don't base my opinions just on the bullet wipe.
18 Base it also on the amount of particulates, the grouping of
19 particulates.

20 Q And based on everything that you based your opinion
21 on, clearly this weapon was fired within four feet to no
22 closer than six inches; isn't that correct?

23 A That's correct.

24 Q Because if the barrel of the weapon would be placed
25 up against the neck of somebody, that would leave certainly a

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1 different demarcation?

2 A On the wounds or clothing?

3 Q On either.

4 A On clothing it would give me an indication of a
5 stellate shape, star shape pattern.

6 Q You did not have that?

7 A I did not have that.

8 Q That is why you can tell this jury it had to be the
9 closest six inches away, correct?

10 A Based on those tests that I shot, yes.

11 Q And, if somebody, for example, is standing about
12 five feet away from the deceased and the deceased is
13 standing, and the weapon is then held up another foot
14 and-a-half, and then fired, therefore about three and-a-half
15 feet from the deceased, that would also be consistent with
16 your findings, correct?

17 A Not five feet, approximately four feet.

18 Q Forty-eight inches?

19 A That's correct.

20 Q If I am standing five feet away, and I raise the
21 weapon which is in evidence as you have said, this can be
22 discharged with one hand?

23 A It can, yes.

24 Q Also be again discharged with two hands, correct?

25 A That's correct.

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1 Q And clearly the trigger power depending how the
2 weapon is held, if I am holding this weapon, which is in
3 evidence, up, foot and-a-half from my body, or three
4 and-a-half feet from the deceased, that is consistent with
5 your findings?

6 A Yes, that's correct.

7 Q Were you also able to evaluate the paths of the
8 bullet through the sweat shirt, in through the body, that
9 would be the medical examiner, you didn't make any evaluation
10 or opinions, the one that was given to me at the crime
11 scene?

12 Yes?

13 A I was able to identify that to my tests, that
14 particular bullet jacket fragments was a common source of the
15 ones that came from his body. And also I was able to
16 identify that as being a positive identification to the one
17 from the crime scene to this firearm.

18 Q No, no. My question is, were you able to determine
19 from your looking at, for example, the sweat shirt, the
20 manner in which it came through the shirt, the, where --
21 withdrawn.

22 The sweat shirt I looked at it had a bullet wound, a
23 couple of holes in the right sleeve; isn't that correct?

24 A Right.

25 Q And you evaluated and examined that, correct?

DiBeneditto - People - Cross

1 A That's correct.

2 Q You're able to tell that the bullets entered from
3 basically the outside of the sweat shirt, correct?

4 A Yes, it was in this kind of a way when it struck
5 and then exited.

6 Q Right. So, in other words, if I am standing like
7 this, this so the record reflects, my right hand's up against
8 my head, it's consistent with the gun powder residue on the
9 outside coming in, correct?

10 A It's consistent with.

11 Q Because on this side there was no residue so
12 clearly that is the entrance wound?

13 A That would be my exit. That would be my exit.

14 Q That is consistent with your findings, correct?

15 A That's correct.

16 Q Okay. And when you went to the medical examiner's
17 office, were you involved with any of the determinations as
18 to this one bullet that came in from the end, and entered the
19 back of his ear?

20 Were you involved in any of that?

21 A I was aware of it, yes.

22 Q So, you're there, you're with the medical examiner,
23 you're evaluating not only the sweat shirt but you're where
24 examination, based on your qualifications as an expert, so
25 forth, it's consistent with the firing of this weapon because

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1 the power behind it, that if I am holding my right hand as we
2 discussed over my head to protect myself, it's consistent
3 with the bullet coming from the outside, exist wound on the
4 inside, it's still powerful enough to come into the back of
5 my ear.

6 Isn't that correct?

7 A That is correct.

8 Q Okay. In fact, that is what you had found when you
9 evaluated the sweat shirt at that point with the body of
10 Mr. Calabrese, correct?

11 A That's correct.

12 Q And then while you were there, you also found two
13 other bullet wounds that went through the sweat shirt
14 consistent with two shots then that were fired a little lower
15 to the, basically, the base of the skull; isn't that correct?

16 A That is correct.

17 Q And that would be consistent with somebody standing
18 perhaps, perhaps over the body and pulling the trigger twice;
19 isn't that correct?

20 A Possibly, yes.

21 Q In fact, the weapon is powerful enough that one of
22 those bullets could have gone through, in fact, the skull and
23 exited the face, correct?

24 A That's correct.

25 Q In this case one of them did, it exited the left

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1 cheek?

2 A No, it exited the cheek.

3 Q Consistent with somebody standing over him and
4 pulling the trigger?

5 A I don't know how consistent that is.

6 Q That would be for the medical examiner?

7 A Yes.

8 Q With the entrance and the exist wounds, correct?

9 A He would be able to make those determinations.

10 Q Okay. Thank you.

11 THE COURT: Anything further, Mr. Hayden.

12 MR. HAYDEN: No, Your Honor.

13 THE COURT: You can step down. Have a nice
14 day.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 THE COURT: Ladies and gentlemen, we're going
18 to take a en minute break while we set up for the next
19 witness. My same admonitions apply. Don't discuss the
20 case amongst yourselves or with anyone else. You're
21 going to be taken back into the jury room for about ten
22 minutes.

23 THE COURT OFFICER: Leave your note pads on
24 the chair.

25 (Whereupon, the following takes place outside the

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1 presence of the jury.)

2 THE COURT: Before we start the next witness,
3 if there's anyone wants to leave the courtroom, feel
4 free to leave now.

5 Mr. Lemke, during this ten minutes, approach, Mr.
6 Hayden.

7 (Whereupon, there was a discussion held off the
8 record.)

9 THE CLERK: Let the record reflect the
10 presence of the jury and the alternates, counsel's
11 present and the defendant is present.

12 THE COURT: Both sides ready to continue?

13 MR. HAYDEN: Yes.

14 MR. LEMKE: Yes.

15 THE COURT: Mr. Hayden, call your next
16 witness.

17 MR. HAYDEN: Dr. Michael DeMartino.

18 DR. MICHAEL DeMARTINO, called as a witness by the People,
19 having been first duly sworn by the Clerk of the Court,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. HAYDEN:

23 THE CLERK: Have a seat. State your name, an
24 spell your last name for the record.

25 THE WITNESS: Michael DeMartino,

COPY

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Proceedings

1 D-E-M-A-R-T-I-N-O.

2 THE COURT: Good morning, doctor.

3 THE WITNESS: Good morning.

4 THE COURT: Mr. Hayden.

5 MR. HAYDEN: Yes, Your Honor.

6 Q Good morning.

7 A Good morning.

8 Q Are you a doctor licensed to practice medicine in
9 the state of New York?

10 A Yes, I am.

11 Q Do you specialize in forensic pathology?

12 A Yes, I do.

13 Q What do you mean by pathology?

14 A Pathology is a specialty of medicine, and it's
15 involved basically in simply with making diagnoses by
16 examining tissue and body fluids.

17 Forensic pathology is a subspecialty of pathology and it
18 basically is involved with the, applying the practice of
19 medicine and pathology to legal issues.

20 Q Describe your educational background?

21 A After college, I went to medical school, State
22 University of New York, Downstate Medical City which is in
23 Brooklyn, New York. After medical school I did an internship
24 in pediatrics, and then a residence in anatomical and
25 clinical pathology at North Shore University Hospital in

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1 Manhasset. After that I did a fellowship in forensic
2 pathology at the Nassau County Medical Examiner's Office.

3 Q Describe your professional background?

4 A After completing my fellowship at the Nassau County
5 Medical Examiner's Office, which was in 1990, I initially was
6 employed by the Suffolk County Medical Examiner as deputy
7 medical examiner. I stayed there for about fifteen months
8 until I returned to the Nassau County Medical Examiner's
9 Office where I worked as a Deputy Medical Examiner until a
10 couple of years ago when I became deputy chief medical
11 examiner.

12 Q Describe your work as a deputy chief medical
13 examiner?

14 A First of all the medical examiner is involved with
15 investigating and certifying death when it occurs under
16 certain conditions. And those conditions would be if a death
17 occurs suddenly or unexpectedly or if a death occurs due to
18 unnatural causes of any kind, when trauma is involved, it
19 involves the medical examiner. Any death that occurs under
20 suspicion circumstances. Any death where a person was not
21 under the care of a physician.

22 These are all the kinds of deaths that we're involved
23 with, and it's our function to investigate the circumstances
24 surrounding the death and also to ultimately certify the
25 cause and manner of death.

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1 As deputy chief medical examiner my additional roles are
2 to supervise the pathologists, substitute for the chief
3 medical examiner when the chief medical examiner is not
4 available, and also to be an active participant in
5 investigating and certifying medical examiner deaths.

6 Q Did you perform autopsies?

7 A Yes, I do.

8 Q Tell the jury what you mean by an autopsy?

9 A An autopsy is an examination of a dead body. And
10 it involves examining the remains both externally and
11 internally, documenting all of the significant findings or
12 absence of findings. It may involve taking photographs,
13 doing any number of other studies based upon the nature of
14 the death. It also involves an internal examination which
15 basically involving making surgical incisions on the body and
16 examining all of the internal organs.

17 Q How many autopsies have you performed?

18 A I personally have performed well over three
19 thousand.

20 Q I am directing your attention to Saturday, December
21 4, 2004.

22 Did you perform an autopsy that day on a young man named
23 Bobby Calabrese?

24 A Yes, I did.

25 Q Briefly describe Bobby Calabrese?

Proceedings

1 A Just very briefly he was a white male, consistent
2 with stated age of twenty-four years. He was sixty-six
3 inches in height, he weighed 157 pounds.

4 Q Did you examine him externally and internally?

5 A Yes, I did.

6 Q Describe the observations you made while examining
7 Bobby's right forearm?

8 A When I examined his right forearm I noted the
9 presence of a gunshot wound.

10 Q Where was it?

11 A It involved the proximal forearm which is closer,
12 close to the elbow, three and-a-half inches below the elbow.
13 The bullet entered the back of the forearm and it went
14 through the forearm without hitting bone and produced a large
15 gaping exit wound on the front or the central surface of the
16 forearm. When I say front, I mean with the palm facing
17 forward. That would be the front.

18 Q How did you determine the entry wound from the exit
19 wound?

20 A Well, the exit wound was, as I mentioned, a large
21 gaping irregular wound which one never sees in an entrance
22 wound. There was no confusion whatsoever that the entrance
23 wound was on the back of the forearm.

24 Q Describe how you determine an entry wound? What
25 does that mean?

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1 A An entry wound has a more regular round usually
2 appearance, has marginal abrasions, sometimes there's soot
3 stippling or searing associated with the wound.

4 Q And the exit wound?

5 A An exit wound does not have any of those things.
6 Often times it's irregular. A lot of times it's larger than
7 the entrance wound.

8 Q Why is that?

9 A Because as a bullet is going through the body a
10 number of things can happen. The bullet can be tumbling, the
11 bullet could become deformed, the core and jacket can
12 separate, and as the bullet is exiting the body it's not
13 going to be going through the skin, its subcutaneous tissues
14 as a regular, in the same kind of first position it does when
15 it enters the body. It could begin rotating. So, it's
16 coming out sideways or deformed, and all of this can cause
17 the exit wound to appear much larger than the entrance wound.

18 Q Do you determine wound track for a wound like
19 that?

20 A Yes.

21 Q What was the wound track?

22 A Basically it was going back to front and a
23 horizontal plane.

24 Q Describe any observations you made while examining
25 Bobby Calabrese's head?

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1 A When I examined his head, there was obviously
2 deformity of his head due to extensive fractures of his skull
3 and his facial bones, and that was a result of three gunshot
4 wounds.

5 Q Where were those wounds?

6 A Two of them were on the back of the head, and they
7 were both to the left of the midline.

8 I can give you the exact measurement if you want. I am
9 going to refer to a copy of my autopsy report, if you want
10 that.

11 MR. HAYDEN: With the Court's permission.

12 MR. LEMKE: No objection, Your Honor.

13 THE COURT: Yes. Is it marked for ID?

14 MR. HAYDEN: No, we should mark it.

15 THE COURT: People's 69 for identification.

16 THE COURT OFFICER: People's 69 marked for
17 ID.

18 The witness last 69.

19 THE COURT: You can refer to those, doctor.

20 THE WITNESS: Thank you.

21 THE COURT: You're welcome?

22 A There were a total of four gunshot wounds. Just
23 summarize. There was three to the head and one to, in the
24 forearm I already described, and I just want to state they
25 were arbitrarily numbered for the purposes of my description

Proceedings

1 in the report and don't indicate the order of fire.

2 What I described as gunshot wound number one was on the
3 back of the head, to the left of the midline. And that was
4 four and-a-half inches from the top of the head, two and two
5 quarters to the left of the midline. And that consisted of
6 an entrance wound with a marginal abrasion. And no
7 surrounding soot or stippling was seen on the body. There
8 was no searing associated with it. There was some small
9 radiating lacerations emanating from the margins of the wound
10 however.

11 Q Did you measure the wound?

12 A In diameter?

13 Q Yes.

14 A Yes, I did. And that would was three eighths of an
15 inch in diameter.

16 Q Did you determine a wound track?

17 A Yes, I did.

18 Q What was the wound track?

19 A The projectile entered the head and perforated the
20 brain, and the direction of the bullet as it was going
21 through the head was back to front slightly left to right and
22 slightly upward.

23 Q Did it exist?

24 A Yes, it did.

25 Q Tell the jury about that?

Proceedings

1 A That bullet existed his head through a large gaping
2 crescent shape exit wound on the superior right cheek.

3 Q The entry wound was considerably more regular than
4 the exit wound?

5 A Correct.

6 Q Describe the wound you designated number two?

7 A That wound was also a gunshot wound to the head,
8 and the gunshot wound of entrance was on the back of the head
9 on the left side, and the entrance wound was located one inch
10 to the left of the midline and six inches from the top of the
11 head.

12 Q Describe the track of that wound?

13 A That bullet produced a similar wound track in that
14 it entered the head and perforated the brain, and it then
15 actually was recovered from the body. It did not exit the
16 body. It was recovered from him, from the tissues of the
17 right cheek. The superior right cheek.

18 Q Describe the appearance of that wound to the back
19 of Bobby's head?

20 A That wound was somewhat irregular having more
21 distinct and larger radiating lacerations. Otherwise it had
22 a marginal abrasion and had characteristics of a typical
23 entrance wound. The lacerations in this particular case
24 were, in my opinion, a result of the extensive fracturing of
25 the underlying skull, and the formation of a temporary cavity

Proceedings

1 as the bullet enters the body.

2 Q What was the diameter of that entrance wound?

3 A Well, again, it was irregular because of the
4 radiating lacerations, and they range from one quarter to one
5 and-a-quarter inches. So, actually the whole wound measured
6 up to one and-a-quarter inches.

7 Q What would -- those entered the back of the Bobby's
8 head; isn't that correct, both of those?

9 A Correct.

10 Q One exited through his right cheek; is that right?

11 A Correct.

12 Q That is the one you designated number one; is that
13 right?

14 A Well, that bullet that exited his cheek I did
15 recover, but it was not from the body. It was outside of the
16 body, and that I designated number one, and I recovered a
17 bullet core.

18 Q Describe how you recovered that bullet core?

19 A As he was being initially examined, actually before
20 the autopsy, as he was being examined and undressed the
21 bullet was found underneath his sweat shirt between his sweat
22 shirt and his right shoulder.

23 Q Once again, that bullet entered from the back of
24 Bobby's head, exited through his right cheek, and the core of
25 that bullet alone was recovered by you outside in the sweat

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1 shirt; is that correct?

2 A Well, it was between his sweat shirt and his right
3 shoulder outside of his body.

4 Q And the second bullet, the one you designated
5 number two, that entered a half inch from the midline, six
6 inches from the top, and that bullet never exited Bobby's
7 head?

8 A I believe it was one inch from the midline and,
9 yes, it is correct, it did not exit his head, and I recovered
10 that from the tissues of his right cheek.

11 Q Describe the third wound?

12 A The third gunshot wound to his head consisted of an
13 entrance wound that was on the right side of the head. That
14 was posterior or behind the right ear by one and-a-half
15 inches, and that consisted of a somewhat irregular elongated
16 wound and had a total size of three quarter inches by one
17 quarter inch. And that bullet entered his head and also
18 produced a wound track through his brain. And the bullet
19 which consisted of a separated core and jacket was recovered
20 from the superior aspects of the left parietal lobe of his
21 brain.

22 Q What does that mean?

23 A It means that the bullet entered his head, went
24 through his brain, but didn't make it out of his head.
25 Remained in his head. And I recovered the bullet from within

Proceedings

1 the brain matter on the left side.

2 Q All three bullets that struck Bobby's head hit the
3 back of his head; is that right?

4 A Yes.

5 Q Only one of those bullets exited Bobby's head?

6 A Correct.

7 Q That bullet exited through the right cheek; is that
8 right?

9 A Correct.

10 Q Did you mark each of the bullets you recovered?

11 A Yes, I did.

12 Q Describe for the jury how you did that?

13 A I marked the bullets with my initials MD, and the
14 numbers corresponding to the numbers that I designated when I
15 described the wounds.

16 Q How did you contain the bullets after you recovered
17 them?

18 A After they were recovered, and after I put my
19 initials and numbers on them, they were photographed and then
20 put in plastic containers which were labeled.

21 Q How did you label them?

22 A With a label, machine that produces the labels, and
23 then on the labels was written bullet number 1, 2 and 3, and
24 also my initials were put on the labels.

25 Q Were fragments recovered as well?

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1 A Yes.

2 Q Were the fragments recovered?

3 A They were recovered from within the brain.

4 Q Tell the jury what you mean by fragment?

5 A Well, when a bullet strikes something it could
6 break apart into fragments or small pieces. Some of them
7 could be very small and they often are found coinciding with
8 the wound track through the object that it's striking, and
9 that is what happened in this case, and those fragments were
10 recovered and submitted separately.

11 MR. HAYDEN: Place I please have 53 in
12 evidence shown to the witness, Your Honor.

13 THE COURT: Yes.

14 THE COURT OFFICER: Witness has People's 53 in
15 evidence.

16 Q Do you recognize the contents of that clear plastic
17 bag?

18 A Yes, I do.

19 Q Describe for the jury what they are?

20 A There are four plastic containers in here, as I was
21 just describing, that are labeled, and each of the labels I
22 initialed, and also states what the contents of the
23 containers are, in this case as I said bullet 1, 2 and 3, and
24 fragments.

25 MR. HAYDEN: May I please have 26 in evidence

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1 shown to the witness?

2 THE COURT: Yes.

3 THE COURT OFFICER: The witness has People's
4 26 in evidence.

5 Q Do you recognize the contents of that clear plastic
6 bag?

7 A Yes, I do.

8 Q What are they?

9 A There are five separate bags here. Four of them
10 contain bullets or fragments I recovered when I did the
11 autopsy. One envelope contains the first bullet core, or the
12 bullet core I labeled number one. The second one contains
13 the core and jacket which was labeled two. And the third one
14 contains the core and jacket which was labeled three. The
15 fourth one contains the bullet fragments. The fifth envelope
16 contains the bullet jacket fragments that was recovered from
17 the crime scene.

18 MR. HAYDEN: With the Court's permission, Your
19 Honor, may Dr. DeMartino step down before the jury and
20 describe for them where the contents of that clear
21 plastic bag were recovered during the course of the
22 autopsy.

23 THE COURT: Yes.

24 Q Would you step down, doctor?

25 THE COURT: Take the exhibit with you.

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1 Please precede.

2 A Everyone see?

3 This first envelope contains the jacket that was
4 recovered from the scene. This I did not recover from the
5 body. The second one contains the core that I recovered from
6 between his sweat shirt and his right shoulder. This third
7 envelope contains the separated core and jacket which was
8 recovered from his right cheek. Fourth envelope contains
9 bullet number three which consists of a separated core and
10 jacket which I recovered from his brain. These are bullets
11 fragments that were recovered from his brain.

12 Q Thank you, doctor.

13 Describe for the jury how you determined that each of
14 the wounds to the back of Bobby's head was an entry wound?

15 A Well, I described what entrance wounds look like
16 and they ha those characteristics of entrance wounds, and
17 another thing that was seen which I did not mention before,
18 was that with an entrance wound, particularly to the head,
19 where the bullet is striking the skull which is a flat bone,
20 and if it's struck perpendicularly by the bullet, one sees a
21 pattern of bevelling on the skull.

22 Q What do you mean by that?

23 A What I mean by that is the edge of the defect
24 through the skull is not going to be perfectly straight going
25 through it. It's going to be angled and it's going to be

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1 angled in a particular way depending on which direction the
2 bullet is going in. And if it's an entrance wound, one sees
3 typically inward bevelling.

4 And, in the wound that I examined, there was evidence of
5 inward bevelling to all three of them which indicates that
6 they were all entrance wounds.

7 Q How did you determine that the wound to Bobby's
8 right cheek was an exist wound?

9 A Well, partially because when I examined his head, I
10 was able to see that there was a wound track going from the
11 entrance wound on his head, the back of his head, going to
12 that area, and also the wound itself which I described as
13 being large and irregular, you know, was classic for an exit
14 wound.

15 Q Based upon your training and experience, and upon
16 your examination of the exit wound to Bobby's face, did you
17 form an opinion, with a reasonable degree of certainty,
18 whether Bobby's face was against a hard surface when the
19 bullet that cause that exit wound was fired?

20 A I would say it's very possible, it's consistent
21 with the right cheek up against something flat and hard at
22 the time that the bullet exited.

23 Q Why do you say that?

24 A Well, because the wound was associated with some
25 contusion around his margins and also one does see that kind

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1 of irregularity, a large gaping defect in that kind of a,
2 what is called a shored exit wound.

3 Q Based upon your training and experience, and upon
4 your examination of Bobby Calabrese, do you have an opinion,
5 with a reasonable degree of certainty whether the bullet that
6 entered Bobby's head from his right ear could have first
7 passed through his right forearm?

8 A I think it's entirely possible.

9 Q Why do you say that?

10 A Well, first of all, if one when examining him,
11 positioned his right arm up against the side, the right side
12 of his head, which I did, it was possible to line up the
13 wounds in such a way that they lined up.

14 Secondly, the entrance wound on the right side of his
15 head behind his right ear was somewhat elongated, somewhat
16 irregular, which is consistent with an entrance wound formed
17 by a bullet that was either deformed or was tumbling. So, it
18 had some characteristics of an entrance wound, but it was
19 somewhat irregular which can be explained again if there's
20 some kind of abnormal motion of the bullet as it's entering
21 the head.

22 Q Based upon your training and experience, and upon
23 your examination of Bobby Calabrese, do you have an opinion,
24 with a reasonable degree of certainty, whether the shooter
25 could have been facing Bobby from more than five feet away

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1 when he fired the bullets and bullet core you recovered?

2 A No, they couldn't have been facing each other,
3 looking at each other.

4 Q Why is that?

5 A Because there is no entrance wound on the front of
6 his head.

7 Q Based upon your training and experience, and based
8 upon your observations of Bobby Calabrese, did you form an
9 opinion, with a reasonable degree of certainty, about the
10 cause of his death?

11 A Yes, I did.

12 Q What is that opinion?

13 A My opinion is he died as a result of the multiple
14 gunshots wounds to his head which perforated his brain and
15 fractured his skull.

16 Q Did you examine Bobby Calabrese's sweat shirt the
17 day of the autopsy?

18 A Yes, I did.

19 Q Describe any observation you made while examining
20 Bobby Calabrese's sweat shirt?

21 A Well, the pertinent observations were that there
22 were multiple perforations on the sweat shirt that were
23 consistent with being caused by a bullet.

24 Q Did you observe any tears to the sweat shirt?

25 A I observe a tear on the front of the sweat shirt,

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1 from the collar going down vertically for four inches, yes.

2 Q Describe the location of each of the bullet holes
3 in Bobby Calabrese's sweat shirt?

4 A There were three wholes on the back of his sweat
5 shirt on the upper left part of the back of his sweat shirt.
6 Two of those holes had a circumferential area of dark
7 discoloration. The third one did not.

8 There was also a perforation on the back of his hood.
9 The sweat shirt had a hood, and on the back of the hood to
10 the left of the midline was a forth perforation.

11 There was also an irregular perforation on the upper
12 right chest area of the sweat shirt, and there were
13 perforations to the distal front and back right sleeve.

14 Q Did you observe blood on Bobby Calabrese's sweat
15 shirt?

16 A I observed what appeared to be blood, yes.

17 Q Where?

18 A I believe I observed it scattered throughout the
19 shirt.

20 Q The front?

21 A I am going to refer to my description.

22 I just described there's extensive scattered apparent
23 blood staining of the garment. I didn't specify exactly what
24 part of it were blood stained.

25 Q Based on your training and experience, and upon

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1 your examination of Bobby Calabrese's sweat shirt, do you
2 have an opinion, with a reasonable degree of certainty, about
3 whether more than, more than one of the bullet holes could
4 have been caused by a single bullet?

5 A I think it's possible that one bullet could, could
6 cause more than one hole through a garment, and in this case,
7 I think it's very possible that one of the bullets, actually
8 two the bullets, produced more than one hole.

9 Q Tell the jury how that can happen?

10 A Well, first of all, the holes on the right sleeve,
11 I think as I described, there's one on the front and back of
12 the distal right sleeve. I think that could have occurred by
13 a bullet entering and exiting his arm. So, a single bullet
14 would cause two holes there.

15 But also on the upper left back area of the shirt, it's
16 possible that a bullet could cause more than one perforation
17 if the garment is folded. So, you're going to have the
18 bullet going through layers of material.

19 Q Based upon your training and appearance, and upon
20 your examination of Bobby Calabrese's sweat shirt, do you
21 have an opinion, with a reasonable degree of certainty,
22 whether the positions of the bullet holes in Bobby
23 Calabrese's sweat shirt were consistent with the sweat shirt
24 having been pulled over his head from in front of him and to
25 his left?

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1 A Yes, it is consistent.

2 Q Describe the basis for that opinion?

3 A Well, the basis of my opinion is that I, first of
4 all, have described the wounds on the body, and knowing that,
5 I positioned the shirt in such a way to see how the holes
6 could have lined up through the shirt with the wounds on the
7 body. And, when doing so, it clearly can only line up if the
8 sweat shirt was pulled in the fashion that you're
9 describing.

10 Q Were photographs taken the day of the autopsy of
11 Bobby's bullet wounds and clothing?

12 A Yes.

13 Q Were photographs taken of the bullets you
14 recovered?

15 A Yes.

16 MR. HAYDEN: Your Honor, may I please have 11
17 through 24 for identification shown to the witness,
18 please.

19 THE COURT: Yes.

20 THE COURT OFFICER: The witness has 11 through
21 24 for ID.

22 Q Do you recognize those photographs?

23 A Yes, I do.

24 Q Are those photographs taken during the course of
25 the autopsy of Bobby Calabrese's body?

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1 A Yes.

2 Q Are those photographs fair and accurate
3 representation of Bobby's body, his clothing, and the bullets
4 you recovered as they were the day of the autopsy?

5 A Yes, they are.

6 MR. HAYDEN: The People offer those
7 photographs in evidence, Your Honor.

8 MR. LEMKE: Yes, Your Honor.

9 THE COURT: No objection?

10 MR. LEMKE: Based on your ruling, none, Your
11 Honor.

12 THE COURT OFFICER: People's exhibit 11
13 through 24 marked in evidence.

14 Do you want them shown back to the witness?

15 MR. HAYDEN: No. May I have them, please.

16 With the Court's permission may Dr. DeMartino
17 step down by the presenter.

18 THE COURT: Yes.

19 Q Please stand to the right of the presenter.

20 MR. HAYDEN: Your Honor, may the record
21 reflect I am now going to place the photograph to the
22 right of exhibit 11 on the presenter.

23 Q Please describe to the jury what that depicts?

24 A That depicts the gunshots wound of entrance, what I
25 described as gunshot wound number one, on the left side of

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1 the back of the head.

2 Q Show the jurors what about that wound tells you
3 it's an entry wound?

4 A It's hard to see in the picture, but the margin of
5 the wound is abraded and that is a characteristic on a
6 finding of an entry wound. It is, even though it is
7 irregular to a small degree, much more round than you would
8 see in typical exit wounds.

9 MR. HAYDEN: May the record reflect, Your
10 Honor I, am not placing the photograph to the right of
11 exhibit 12 on the presenter.

12 Q Describe what that depicts?

13 A That is the entrance wound, gunshot wound number 2,
14 and as I described it's a much more irregular wound, has
15 these lacerations, but over here, you can see a marginal
16 abrasion an that is very, in this case, diagnostic of an
17 entry wound, and as I described earlier, these lacerations
18 are a result of an underlying skull fracture and formation of
19 a temporary cavity that was formed when a bullet is going
20 through an object.

21 Q Do you see bullet wound number one in that
22 photograph?

23 A Yes.

24 Q Point that out to the jury?

25 A Bullet number one is here.

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1 Q Just tell the jury again the path of that bullet
2 wound, number one, to the you were left corner of that
3 photograph as you're looking at it on the screen?

4 A The path of the wound track is going back to front,
5 left to right, and slightly upwards.

6 Q Is that the bullet that travels out and exists
7 through Bobby's right cheek?

8 A Yes.

9 MR. HAYDEN: May the record reflect I am now
10 displaying the photograph on the left side of 12 to the
11 jury.

12 Q Using that photograph, showing the jurors, explain
13 to them what told you that was an entry wound?

14 A As I already describe there's a marginal abrasion
15 here. Abrasion here. And that, in combination with the
16 inward bevelling of the skull, which you cant see in this
17 picture, is diagnostic that that is an entrance wound.

18 Q Actual point of entry is where?

19 A The actual point of entry would be in this area
20 here.

21 MR. HAYDEN: May the record reflect, Your
22 Honor, that I am now going to display the photograph on
23 the left side of exhibit 13 to the jury.

24 Q Describe to the jury what that depicts?

25 A This depicts what I called gunshot would number

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1 three. This is the entrance wound. This is the right ear.
2 Here's behind the right ear entrance wound as I described is
3 somewhat elongated, somewhat irregular.

4 Q Tell the jury what told you that it was an entry
5 wound?

6 A Well, I, again, same thing. There's an abrasion
7 associated with the wound and also you can't see in the
8 picture, but was also diagnostic of whether there was a
9 presence of inward bevelling.

10 MR. HAYDEN: I am now displaying the
11 photograph to the right of 13.

12 Q Describe what that photograph depicts?

13 A This photograph shows the right side of the
14 decedent's face, and on the superior right cheek is the exit
15 wound by gunshot wound number one, this area here.

16 Q Explain to the jury what told you that was an exit
17 wound?

18 A Exits wounds because of its irregularity, it's
19 large size, the absence of any kind of soot stippling,
20 searing or marginal abrasion, and it also coincided with the
21 wound track of bullet wound number one which entered the back
22 of his head.

23 MR. HAYDEN: May the record reflect, Your
24 Honor, I am now going to display 14 in evidence.

25 Q Describe to the jury what the photograph to the

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1 right of that exhibit shows?

2 A The photograph shows the back of the decedent's
3 right forearm, and you can see a gunshot wound did match the
4 gunshot wound entrance here, just a little bit distal to the
5 elbow on the back of the right forearm.

6 Q And the photograph to the left?

7 A That is a close up of the entrance wound.

8 Q What tells you that that is an entry wound?

9 A Very round punched out wound cookie cutter like
10 wound. It has a marginal abrasion.

11 MR. HAYDEN: Your Honor, I am now going to
12 display the photograph to the right of exhibit 15.

13 Q Describe for the jury what that depicts?

14 A This is a picture of the front of his right forearm
15 showing the exit wound on the proximal area of the front of
16 his forearm. That would be this area here. This large
17 gaping defect.

18 Q How do you know that is an exit wound?

19 A Again, as I already described the lesion, its large
20 gaping wound, it has the characteristics of an entrance wound
21 such as a large gaping appearance, and it also did not have
22 any marginal abrasion.

23 Q What causes all that damage?

24 A Well, when a bullet, especially if its relatively
25 powerful round, enters an object, there is a transfer inside

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1 of energy to the bullet to the surrounding object, in this
2 case it's tissue, human tissue. And what happens is a
3 temporary cavity is formed and it can basically rip apart the
4 tissue as we see here. Causes gaping defects.

5 MR. HAYDEN: I am now going display 16, Your
6 Honor.

7 Q Describe for the jury what that photograph depicts?

8 A This is a photograph of his sweat shirt showing a
9 perforation on the distal right sleeve.

10 Q Is that entry or exit?

11 A I believe that's the entry.

12 MR. HAYDEN: I am now going to display the
13 photograph to the left of 17.

14 Q Is that a fair and accurate depiction where the
15 hole behind Bobby's right ear was?

16 A Yes.

17 MR. HAYDEN: I am now going to display the
18 photograph on the right side of 17.

19 Q What does that depict?

20 A This is a photograph of his sweat shirt showing the
21 front of the sweat shirt.

22 Q Where was the tear you described?

23 A It extended from the collar area downward. So, it
24 would be in this area here.

25 MR. HAYDEN: I am now going to display the

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1 photograph to the left of 18 in evidence.

2 Q What does that depict?

3 A This is a photograph of the back of the sweat shirt
4 showing the upper portion, left side, and here's the lower
5 part of the back of the hood.

6 In this picture we see four holes that are marked by
7 arrows. Three of them are on the upper left back area and
8 one of them is on the lower left part of the hood.

9 MR. HAYDEN: I am now going to display the
10 photograph to the right side.

11 Q Does this depict the four holes about which you
12 testified?

13 A Yes. This is a close-up photograph of the same
14 thing I described.

15 MR. HAYDEN: I am now going to display the
16 photograph at the bottom of exhibit 19.

17 Q What does that depict?

18 A This shows the sweat shirt, again, front of the
19 sweat shirt. And what you can see here, this is the tear on
20 the front of the shirt extending downwards from the collar in
21 the midline. Arrow is pointing to this perforating defect on
22 the upper right chest area.

23 MR. HAYDEN: I am now going to show the
24 photograph at the top of 19.

25 Q What does that depict?

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A This is a close up of the perforation on the upper right chest area.

3 Q That perforation would be consistent with the
4 explosive power of an exit wound?

5 A Yes.

6 MR. HAYDEN: Now going to display the
7 photograph to the right of exhibit 20.

8 Q What is that?

9 A That is a photograph of a tank type shirt that he
10 was wearing underneath the sweat shirt. And, you can see
11 here there's some separation at the seam of the collar on the
12 back to the left of the midline.

13 MR. HAYDEN: I am now going to display top
14 photograph of 21 in evidence.

15 Q What does that depict?

16 A It's the same shirt that I described on the
17 previous photograph with a close up of the tear involving the
18 seam of the collar on the back of the shirt, the left of the
19 midline.

20 MR. HAYDEN: I am now going to show the bottom
21 of 21.

22 Q What is that?

23 A It's a close up of the same thing showing the tear
24 of the collar.

25 MR. HAYDEN: I am now going to display the

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1 bottom photograph on 22.

2 Q What is that?

3 A This is a photograph of the bullet core and jacket
4 that were recovered from his right cheek that correspond to
5 what I described as bullet wound number two.

6 Q This didn't exit Bobby's head, this was recovered
7 from inside his head; is that right?

8 A Correct.

9 Q In the area of his right cheek?

10 A Correct.

11 MR. HAYDEN: Now going to display top
12 photograph of exhibit 23.

13 Q What is that?

14 A This is a photograph of the bullet four and bullet
15 jacket that were recovered from within the brain substance of
16 the decedent. That was corresponding to what I described as
17 bullet wound number three.

18 Q Where was this recovered?

19 A From his brain, the right parietal lobe of his
20 brain.

21 MR. HAYDEN: I am now going to dis --

22 A Left parietal lobe.

23 Q That is the left?

24 A Correct.

25 MR. HAYDEN: I am now going do display he

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1 photograph at the bottom of 23.

2 Q What is that?

3 A This is a photograph of the core that was recovered
4 from outside of his body, that was found between his sweat
5 shirt and his right shoulder, and also from the bullet
6 fragments that were recovered.

7 MR. HAYDEN: I am now going to display exhibit
8 24 in evidence.

9 Q What is that?

10 A This show the fragments that were recovered.

11 Q Please retake the witness stand.

12 MR. HAYDEN: Nothing further, Your Honor.

13 Thank you.

14 THE COURT: Could you approach the bench,
15 counsel.

16 (Whereupon, there was a bench conference held off
17 the record.)

18 THE COURT: Ladies and gentlemen in the
19 gallery, please remain seated while the jury leaves the
20 courtroom.

21 We're going do break now to two o'clock. You must
22 not converse among yourselves or with anyone else upon
23 any subject connected with the trial. You must not read
24 or listen to any accounts or discussions of the case in
25 the event it is reported by newspapers or other media.

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1 You must not visit or view the premises or place where
2 the offense charged was allegedly committed or any other
3 premises or place involved in the case.

4 Prior to your being discharged, you must not
5 request, accept, agree to accept, or discuss with any
6 person the receiving or accepting of any payment or
7 benefit in consideration for supplying any information
8 concerning the trial.

9 You must promptly report to the Court any incident
10 within your knowledge involving an attempt by any person
11 to improperly influence any member of the jury.

12 You shall not access the Internet or Worldwide Wide
13 by any means available to you for the purposes of either
14 learning about this case or to learn about the law and
15 legal issues concerning the case.

16 See you at two o'clock.

17 THE COURT OFFICER: Okay. Jurors leave your
18 note pads on the chairs and follow me to out.

19 (Whereupon, the following takes place outside
20 the presence of the jury.)

21 THE COURT: Doctor, you may step down. Thank
22 you.

23 Mr. Hayden, Mr. Lemke, approach the bench.

24 Court's in recess until two o'clock.

25 L U N C H E O N R E C E S S